



**6560-50-P**

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 80**

**[EPA-HQ-OAR-2017-0146; FRL-9972-06-OAR]**

**RIN 2060-AT69**

### **Approval of Tennessee's Request to Relax the Federal Reid Vapor Pressure (RVP)**

#### **Gasoline Volatility Standard for Shelby County (Memphis).**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve a request from the state of Tennessee for EPA to relax the Reid Vapor Pressure (RVP) standard applicable to gasoline introduced into commerce from June 1 to September 15 of each year (summertime ozone season) in Shelby County, Tennessee (the Memphis Area). Specifically, EPA is approving amendments to the regulations to allow the gasoline RVP standard for Shelby County to rise from 7.8 pounds per square inch (psi) to 9.0 psi. EPA has determined that this change to the federal RVP regulation is consistent with the applicable provisions of the Clean Air Act (CAA).

**DATES:** This final rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2017-0461. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) website.

Although listed in the index, some information may not be publicly available, e.g., Confidential

Business Information (CBI) or other information whose disclosure is restricted by statute.

Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** David Dickinson, Office of Transportation and Air Quality, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, Washington, DC 20460; telephone number: (202) 343-9256; e-mail address:

[dickinson.david@epa.gov](mailto:dickinson.david@epa.gov), or Rudolph Kapichak, Office of Transportation and Air Quality, U.S.

Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: (734) 214-4574; e-mail address: [kapichak.rudolph@epa.gov](mailto:kapichak.rudolph@epa.gov).

**SUPPLEMENTARY INFORMATION:**

The contents of this preamble are listed in the following outline:

- I. General Information
- II. Action Being Taken
- III. History of the Gasoline Volatility Requirement
- IV. EPA's Policy Regarding Relaxation of Gasoline Volatility Standards in Ozone Nonattainment Areas That Are Redesignated as Attainment Areas
- V. Tennessee's Request to Relax the Federal Gasoline RVP Requirement for Shelby County
- VI. Final Action
- VII. Statutory and Executive Order Reviews
- VIII. Legal Authority and Statutory Provisions

**I. General Information**

- A. Does this action apply to me?

Entities potentially affected by this rule are fuel producers and distributors who do business in Shelby County.

Examples of Potentially Regulated Entities	NAICS <sup>1</sup> Codes
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<sup>1</sup> North American Industry Classification System

Petroleum refineries	324110
Gasoline Marketers and Distributors	424710 424720
Gasoline Retail Stations	447110
Gasoline Transporters	484220 484230

The above table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. The table lists the types of entities of which EPA is aware that potentially could be affected by this rule. Other types of entities not listed on the table could also be affected by this rule. To determine whether your organization could be affected by this rule, you should carefully examine the regulations in 40 CFR 80.27. If you have questions regarding the applicability of this action to a particular entity, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

**B. What is EPA’s authority for taking this action?**

The statutory authority for this action is granted to EPA by Sections 211(h) and 301(a) of the CAA, as amended; 42 U.S.C. 7545(h) and 7601(a).

**II. Action Being Taken**

This final rule approves a request from the state of Tennessee to change the summertime gasoline RVP standard for Shelby County (the Memphis Area) from 7.8 psi to 9.0 psi by amending EPA’s regulations at 40 CFR 80.27(a)(2). Tennessee did not request relaxation of the federal RVP standard from 7.8 psi to 9.0 psi when it submitted the CAA section 175A maintenance plan for the 2008 ozone national ambient air quality standard (NAAQS) that was approved on June 23, 2016 (81 FR 40816). In a subsequent rulemaking, based on Tennessee’s April 12, 2017 request, EPA approved a CAA section 110(l) non-interference demonstration that

relaxing the federal RVP gasoline requirement from 7.8 psi to 9.0 psi for gasoline sold from June 1 to September 15 of each year would not interfere with maintenance of the NAAQS in Shelby County. For more information on EPA's approval of Tennessee's CAA section 110(l) non-interference demonstration for Shelby County, please refer to the July 7, 2017 rulemaking (82 FR 31462).

The preamble for this rulemaking is organized as follows: Section III, provides the history of the federal gasoline volatility regulation; Section IV, describes the policy regarding relaxation of volatility standards in ozone nonattainment areas that are redesignated as attainment areas; Section V, provides information specific to Tennessee's request for Shelby County; and Section VI, presents the final action in response to Tennessee's request.

### **III. History of the Gasoline Volatility Requirement**

On August 19, 1987 (52 FR 31274), EPA determined that gasoline nationwide was becoming increasingly volatile, causing an increase in evaporative emissions from gasoline-powered vehicles and equipment. Evaporative emissions from gasoline, referred to as volatile organic compounds (VOCs), are precursors to the formation of tropospheric ozone and contribute to the nation's ground-level ozone problem. Exposure to ground-level ozone can reduce lung function, thereby aggravating asthma and other respiratory conditions, increase susceptibility to respiratory infection, and may contribute to premature death in people with heart and lung disease.

The most common measure of fuel volatility that is useful in evaluating gasoline evaporative emissions is RVP. Under CAA section 211(c), EPA promulgated regulations on March 22, 1989 (54 FR 11868) that set maximum limits for the RVP of gasoline sold during the regulatory control periods that were established on a state-by-state basis in the final rule. The

regulatory control periods addressed the portion of the year when peak ozone concentrations were expected. These regulations constituted Phase I of a two-phase nationwide program, which was designed to reduce the volatility of gasoline during the high ozone season. On June 11, 1990 (55 FR 23658), EPA promulgated more stringent volatility controls as Phase II of the volatility control program. These requirements established maximum gasoline RVP standards of 9.0 psi or 7.8 psi (depending on the state, the month, and the area's initial ozone attainment designation with respect to the 1-hour ozone NAAQS).

The 1990 CAA Amendments established a new section 211(h) to address fuel volatility. CAA section 211(h) requires EPA to promulgate regulations making it unlawful to sell, offer for sale, dispense, supply, offer for supply, transport, or introduce into commerce gasoline with an RVP level in excess of 9.0 psi during the high ozone season. CAA section 211(h) also prohibits EPA from establishing a volatility standard more stringent than 9.0 psi in an attainment area, except that EPA may impose a lower (more stringent) standard in any former ozone nonattainment area redesignated to attainment.

On December 12, 1991 (56 FR 64704), EPA modified the Phase II volatility regulations to be consistent with CAA section 211(h). The modified regulations prohibited the sale of gasoline with an RVP above 9.0 psi in all areas designated attainment for ozone, effective January 13, 1992. For areas designated as nonattainment, the regulations retained the original Phase II standards published on June 11, 1990 (55 FR 23658), which included the 7.8 psi high ozone season limitation for certain areas. As stated in the preamble to the Phase II volatility controls and reiterated in the proposed change to the volatility standards published in 1991, EPA will rely on states to initiate changes to their respective volatility programs. EPA's policy for approving such changes is described below in Section IV. of this preamble.

The state of Tennessee initiated this change by requesting that EPA relax the 7.8 psi gasoline RVP standard to 9.0 psi for Shelby County. Accordingly, the state of Tennessee provided a technical demonstration showing that relaxing the federal gasoline RVP requirements from 7.8 psi to 9.0 psi would not interfere with maintenance of the NAAQS in Shelby County or with any other applicable CAA requirement. *See* Section V. of this preamble for information specific to Tennessee's request for Shelby County.

#### **IV. EPA's Policy Regarding Relaxation of Gasoline Volatility Standards in Ozone Nonattainment Areas That Are Redesignated as Attainment Areas**

As stated in the rulemaking for EPA's amended Phase II volatility standards (56 FR 64706, December 12, 1991), any change in the volatility standard for a nonattainment area that was subsequently redesignated as an attainment area must be accomplished through a separate rulemaking that revises the applicable standard for that area. Thus, for former 1-hour ozone nonattainment areas where EPA mandated a Phase II volatility standard of 7.8 psi RVP in the December 12, 1991 rulemaking, the federal 7.8 psi RVP gasoline requirement remains in effect, even after such an area is redesignated to attainment, until a separate rulemaking is completed that relaxes the federal RVP gasoline standard in that area from 7.8 psi to 9.0 psi.

As explained in the December 12, 1991 (56 FR 64706) rulemaking, EPA believes that relaxation of an applicable gasoline RVP standard is best accomplished in conjunction with the redesignation process. In order for an ozone nonattainment area to be redesignated as an attainment area, CAA section 107(d)(3) requires the state to make a showing, pursuant to CAA section 175A(a), that the area is capable of maintaining attainment for the ozone NAAQS for ten years. Depending on the area's circumstances, this maintenance plan will either demonstrate that the area is capable of maintaining attainment for ten years without the more stringent gasoline

volatility standard or that the more stringent gasoline volatility standard may be necessary for the area to maintain attainment of the ozone NAAQS. Therefore, in the context of a request for redesignation, EPA will not initiate the rulemaking to amend 40 CFR 80.27 to relax the gasoline volatility standard unless the state specifically requests a relaxation and the maintenance plan demonstrates to the satisfaction of EPA that the area will maintain attainment for ten years without the need for the more stringent volatility standard.

#### **V. Tennessee's Request to Relax the Federal Gasoline RVP Requirement for Shelby County**

On April 12, 2017, the state of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), submitted a CAA section 110(l) non-interference demonstration which illustrated that removal of the federal RVP requirement of 7.8 psi for gasoline during the summertime ozone season for Shelby County would not interfere with maintenance of any NAAQS, including the 2008 ozone NAAQS. Specifically, TDEC provided a technical demonstration showing that relaxing the federal gasoline RVP requirement would not interfere with maintenance of the ozone NAAQS or with any other applicable requirement of the CAA. As noted above, Tennessee did not request relaxation of the federal RVP standard from 7.8 psi to 9.0 psi when it submitted a CAA section 175A maintenance plan for the 2008 ozone NAAQS that was approved on June 23, 2016 (81 FR 40816). However, the approved maintenance plan included the use of gasoline with an RVP standard of 9.0 psi. Therefore, a revised maintenance plan with an RVP standard of 9.0 psi is not needed. Nevertheless, TDEC has appropriately requested (by its April 21, 2017 letter) that EPA approve its non-interference demonstration and requested that Shelby County no longer be subject to the federal RVP standard of 7.8 psi for gasoline during the summertime ozone season.

On May 11, 2017, EPA proposed to approve the CAA section 110(l) non-interference demonstration. The proposal provided an opportunity for the public to comment on the action. *See* 82 FR 21966. EPA received no comments on the proposal to approve the non-interference demonstration for Shelby County. In a July 7, 2017 final rule, EPA approved Tennessee's non-interference demonstration for Shelby County. *See* 82 FR 31462.

EPA's proposal to amend the applicable gasoline RVP standard from 7.8 psi to 9.0 psi (82 FR 39098, August 17, 2017) was subject to public notice and comment. EPA received no comment on its proposal. In this action, EPA is approving Tennessee's request to relax the summertime ozone season gasoline RVP standard for Shelby County from 7.8 psi to 9.0 psi. Specifically, EPA is amending the applicable gasoline RVP standard from 7.8 psi to 9.0 psi provided at 40 CFR 80.27(a)(2). This action to approve Tennessee's request to relax the summertime ozone season RVP standard for Shelby County from 7.8 psi to 9.0 psi is based on EPA's July 7, 2017 approval of Tennessee's non-interference demonstration.

## **VI. Final Action**

EPA is taking final action to approve Tennessee's request for the Agency to relax the RVP standard applicable to gasoline introduced into commerce from June 1 to September 15 of each year in Shelby County from 7.8 psi to 9.0 psi as provided at 40 CFR 80.27(a)(2). This approval is based on Tennessee's request and EPA's final determination in its July 7, 2017 final rule (82 FR 31462) that Tennessee, as required by CAA section 110(l), made an adequate demonstration to show that removal of this federal requirement would not interfere with the ozone NAAQS in the Shelby County and is consistent with CAA requirements. This action amends the applicable gasoline RVP standard from 7.8 psi to 9.0 psi provided at 40 CFR 80.27(a)(2) for Shelby County.

## **VII. Statutory and Executive Order Reviews**

### *A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a significant regulatory action and therefore was not submitted to the Office of Management and Budget (OMB) for review.

### *B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs*

This action is considered an Executive Order 13771 deregulatory action. This final rule provides meaningful burden reduction because it relaxes the federal RVP standard for gasoline in Shelby County, Tennessee and as a result, fuel suppliers will no longer be required to provide 7.8 psi lower RVP gasoline anywhere in Tennessee during the summer months (June 1st through September 15<sup>th</sup>). Relaxing the volatility requirements will also be beneficial because this action can improve the fungibility of gasoline sold in the State of Tennessee by allowing the gasoline sold in Memphis to be identical to the fuel sold throughout Tennessee.

### *C. Paperwork Reduction Act (PRA)*

This action does not impose any information collection burden under the PRA, because it does not contain any information collection activities.

### *D. Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. The small entities subject to the requirements of this action are

refiners, importers or blenders of gasoline that choose to produce or import low RVP gasoline for sale in Tennessee, and gasoline distributors and retail stations in Tennessee. This action relaxes the federal RVP standard for gasoline sold in Shelby County, Tennessee during the summertime ozone season (June 1 to September 15 of each year) to allow the RVP for gasoline sold in this county to rise from 7.8 psi to 9.0 psi. This rule does not impose any requirements or create impacts on small entities beyond those, if any, already required by or resulting from the CAA section 211(h) RVP program. We have therefore concluded that this action will have no net regulatory burden for all directly regulated small entities.

*E. Unfunded Mandates Reform Act (UMRA)*

This final rule does not contain an unfunded mandate of \$100 million or more as described in UMRA, 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small governments. The action implements mandates that are specifically and explicitly set forth in CAA section 211(h) without the exercise of any policy discretion by the EPA.

*F. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

*G. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments*

This action does not have tribal implications, as specified in Executive Order 13175. This final rule will affect only those refiners, importers or blenders of gasoline that choose to produce or import low RVP gasoline for sale in Shelby County and gasoline distributors and retail stations in the Area. Thus, Executive Order 13175 does not apply to this action.

*H. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks*

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk. The EPA has no reason to believe that this action will disproportionately affect children since Tennessee has provided evidence that a relaxation of the gasoline RVP will not interfere with its attainment of the ozone NAAQS for Shelby County, or any other applicable CAA requirement. By separate action, the EPA has approved Tennessee’s non-interference demonstration regarding its maintenance plan for the 2008 ozone NAAQS, and that Tennessee’s relaxation of the gasoline RVP standard in Shelby County to 9.0 RVP will not interfere with any other NAAQS or CAA requirement.

*I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

*J. National Technology Transfer and Advancement Act (NTTAA)*

This rulemaking does not involve technical standards.

*K. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on

minority, low-income or indigenous populations because it does not affect the applicable ozone NAAQS which establish the level of protection provided to human health or the environment. This rule relaxes the applicable volatility standard of gasoline during the summer. The EPA has concluded that the relaxation will not cause a measurable increase in ozone concentrations that would result in a violation of any ozone NAAQS including the 2008 ozone NAAQS and the more stringent 2015 ozone NAAQS. Therefore, disproportionately high and adverse human health or environmental effects on minority or low-income populations are not an anticipated result. The results of this evaluation are contained in EPA's proposed and final rules for Tennessee's non-interference demonstration. A copy of Tennessee's April 12, 2017 letter requesting that the EPA relax the gasoline RVP standard, including the technical analysis demonstrating that the less stringent gasoline RVP would not interfere with continued maintenance of the 2008 ozone NAAQS in Shelby County, or with any other applicable CAA requirement, has been placed in the public docket for this action.

*L. Congressional Review Act (CRA)*

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller of the United States. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

*M. Petitions for Judicial Review*

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of

this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* CAA section 307(b)(2).

## **VIII. Legal Authority and Statutory Provisions**

The statutory authority for this action is granted to EPA by sections 211(h) and 301(a) of the Clean Air Act, as amended; 42 U.S.C. 7545(h) and 7601(a).

### **List of Subjects in 40 CFR Part 80**

Environmental protection, Administrative practice and procedures, Air pollution control, Fuel additives, Gasoline, Motor vehicle and motor vehicle engines, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

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Dated: December 15, 2017.

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E. Scott Pruitt,  
Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

### **PART 80—REGULATION OF FUELS AND FUEL ADDITIVES**

1. The authority citation for part 80 continues to read as follows:

**AUTHORITY:** 42 U.S.C. 7414, 7521, 7542, 7545, and 7601(a).

2. In § 80.27, paragraph (a)(2)(ii) is amended in the table by revising the entry for “Tennessee” and footnote 10 to read as follows:

**§ 80.27 Controls and prohibitions on gasoline volatility.**

(a) \* \* \*

(2) \* \* \*

(ii) \* \* \*

**APPLICABLE STANDARDS<sup>1</sup> 1992 AND SUBSEQUENT YEARS**

State	May	June	July	August	September
*****					
Tennessee <sup>10</sup>	9.0	9.0	9.0	9.0	9.0
*****					

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<sup>1</sup> Standards are expressed in pounds per square inch (psi).

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<sup>10</sup> The standard for Knox County from June 1 until September 15 in 1992 through June 2, 1994 was 7.8 psi. The standard for the Middle Tennessee Area (Davidson, Rutherford, Sumner, Williamson, and Wilson Counties) from June 1 until September 15 in 1992 through June 7, 2017 was 7.8 psi. The standard in Shelby County (Memphis Area) from June 1 until September 15 in 1992 through 2017 was 7.8 psi.

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